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4/21/2020 3:26 pm

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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EUNICE KIPPINS,

Plaintiff,

- against-

AMR CARE GROUP, INC. and JILL SMITH,
individually,

Defendants.
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FEUERSTEIN, District Judge:

U.S. DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
LONG ISLAND OFFICE

ORDER
19-CV-3120 (SJF)(ARL)

Before the Court is a Report and Recommendation (“the Report”) of the Honorable Arlene R. Lindsay, United States Magistrate, dated March 20, 2020, (1) recommending (a) that defendants’ motion to dismiss pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure be granted, and (b) that plaintiff be given leave to amend her complaint; and (2) advising *inter alia*, (a) that “[a]ny objections to th[e] Report . . . must be filed with the Clerk of the Court within fourteen (14) days of receipt[,]”, and (b) that a “[f]ailure to file objections within [14 days] waives the right to appeal the District Court’s Order.” Report at 8, Docket Entry (“DE”) [20] (citing 28 U.S.C. § 636(b)(1); FED. R. CIV. P. 72; *Mejia v. Roma Cleaning, Inc.*, No. 17-3446, 2018 WL 4847199, at *1 (2d Cir. Oct. 5, 2018); *Wagner & Wagner, LLP v. Atkinson, Haskins, Nellis, Brittingham, Gladd & Carwile, P.C.*, 596 F.3d 84, 92 (2d Cir. 2010); and *Beverly v. Walker*, 118 F.3d 900, 902 (2d Cir. 1997)).

A copy of the Report was served upon counsel for all parties via ECF on March 20, 2020. Plaintiff timely sought, with Defendants’ consent, an extension of time to April 17, 2020 to file an amended complaint or file objections to the Report. That request was granted, and on April 17, 2020, Plaintiff filed an Amended Complaint, *see* DE [22], but no party has filed objections. For the reasons set forth below, Magistrate Judge Lindsay’s Report is adopted in its entirety.

I. DISCUSSION

A. Standard of Review

Any party may serve and file written objections to a report and recommendation of a magistrate judge within fourteen (14) days after being served with a copy thereof. 28 U.S.C. § 636(b)(1); FED. R. CIV. P. 72(b)(2). Any portion of such a report and recommendation to which a timely objection has been made is reviewed *de novo*. 28 U.S.C. § 636(b)(1); FED. R. CIV. P. 72(b)(3). However, the Court is not required to review the factual findings or legal conclusions of the magistrate judge as to which no proper objections are interposed. *See Thomas v. Arn*, 474 U.S. 140, 150, 106 S. Ct. 466, 88 L. Ed. 2d 435 (1985). Indeed, “[w]here parties receive clear notice of the consequences, failure to timely object to a magistrate’s report and recommendation operates as a waiver of further judicial review of the magistrate’s decision.” *Smith v. Campbell*, 782 F.3d 93, 102 (2d Cir. 2015) (quoting *Mario v. P & C Food Markets, Inc.*, 313 F.3d 758, 766 (2d Cir. 2002)).

Nonetheless, the waiver rule is “nonjurisdictional” and, therefore the Court may excuse a violation thereof “in the interests of justice.” *King v. City of N.Y., Dep’t of Corr.*, 419 F. App’x 25, 27 (2d Cir. 2011) (summary order) (quoting *Roldan v. Racette*, 984 F.2d 85, 89 (2d Cir. 1993)). “Such discretion is exercised based on, among other factors, whether the defaulted argument has substantial merit or, put otherwise, whether the magistrate judge committed plain error in ruling against the defaulting party.” *Spence v. Superintendent, Great Meadow Corr. Facility*, 219 F.3d 162, 174 (2d Cir. 2000).

To accept the magistrate’s report and recommendation absent a timely objection, the court need only be satisfied that there is no clear error on the face of the record. *See* FED. R.

Civ. P. 72(b); *Baptichon v. Nevada State Bank*, 304 F. Supp. 2d 451, 453 (E.D.N.Y. 2004), *aff'd*, 125 F. App'x 374 (2d Cir. 2005). Whether or not proper objections have been filed, the district judge may, after review, accept, reject, or modify any of the magistrate judge's findings or recommendations. 28 U.S.C. § 636(b)(1); FED. R. CIV. P. 72(b).

B. Review of the Report

No party has filed objections to the Report within the extended response time set by the Court. As the parties were provided with adequate notice of the Report and an express warning of the consequences of a failure to timely file objections thereto, their failure to object operates as a waiver of further judicial review. *See Caidor v. Onondaga Cnty.*, 517 F.3d 601, 602-03 (2d Cir. 2008); *Mario*, 313 F.3d at 766. Thus, the Court “need only satisfy itself that there is no clear error on the face of the record to accept a magistrate judge’s report and recommendation.” *Safety-Kleen Sys., Inc. v. Silogram Lubricants Corp.*, No. 12-CV-4849, 2013 WL 6795963, at *1 (E.D.N.Y. Dec. 23, 2013). After a careful review of the Report, the Court finds no plain error in either the reasoning or the conclusions reached therein, and accordingly, adopts it in its entirety, including granting Plaintiff leave to amend.

II. CONCLUSION

The Report is adopted in its entirety. Accordingly, it is hereby ordered that: (1) the motion to dismiss, DE [16], is granted without prejudice to the filing of an amended complaint; (2) the Amended Complaint, having already been filed, *see* DE [22], is deemed the operative pleading; (3) Defendants shall have twenty-one (21) days from entry of this Order to file their answer or otherwise respond to the Amended Complaint; and (4) the status conference scheduled

for April 30, 2020 is adjourned to **May 18, 2020** at 11:15 a.m. in courtroom 1010 of the Central Islip Courthouse, subject to change.

SO ORDERED.

/s/ *Sandra J. Feuerstein*

Sandra J. Feuerstein
United States District Judge

Dated: Central Islip, New York
April 21, 2020